

AMENDED IN ASSEMBLY JUNE 14, 2000

AMENDED IN SENATE MAY 20, 1999

SENATE BILL

No. 865

Introduced by Senator Hughes

February 25, 1999

An act to amend ~~Section 7163 of the Business and Professions Code, and to add Section 8214.01 to the Government Code, relating to real property. Section 14006 of the Penal Code, relating to gangs.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 865, as amended, Hughes. ~~Real property Gangs:~~ *CLEAR* project.

Existing law authorizes the City and County of Los Angeles to establish and operate for 2 years a Community Law Enforcement and Recovery (CLEAR) Demonstration Project, a multiagency gang intervention program. Existing law also provides that the CLEAR project shall remain operative until no later than 2 years from the date that the funds are initially appropriated by the Legislature for the project. Existing law repeals these provisions on January 1, 2001.

This bill would extend the repeal date until January 1, 2004. This bill would provide that implementation of this project would be contingent upon a Budget Act appropriation.

~~Existing law specifies certain requirements as to the enforceability of home improvement contracts and~~

~~authorizes the Registrar of Contractors to suspend or revoke any license or registration, as specified.~~

~~This bill would provide that a violation of those provisions by a licensed home improvement contractor or person subject to licensure, or by his or her agent or salesperson shall subject the licensee to mandatory suspension or revocation of licensure.~~

~~Existing law provides that a notary public who knowingly and willfully with intent to defraud performs any notarial act in relation to a deed of trust on real property, as specified, is guilty of a felony.~~

~~This bill would require the Secretary of State to revoke the commission of a notary public who, in relation to any document or instrument which affects title to, places an encumbrance on, places an interest served by a mortgage deed or trust on, or reconveys a mortgage or deed of trust on real property, or knowingly and willfully makes a false statement, as specified.~~

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 7163 of the Business and~~
2 ~~SECTION 1. Section 14006 of the Penal Code is~~
3 ~~amended to read:~~

4 ~~14006. The CLEAR project shall remain operative~~
5 ~~until no later than two years from the date that funds are~~
6 ~~initially appropriated by the Legislature for the project.~~
7 ~~This title shall remain in effect only until January 1, 2001~~
8 ~~2004, and as of that date, this title is repealed, unless a~~
9 ~~later enacted statute, that is enacted before January 1,~~
10 ~~2001 2004, deletes or extends that date. Implementation~~
11 ~~of this project is contingent upon a Budget Act~~
12 ~~appropriation.~~

13 ~~Professions Code is amended to read:~~

14 ~~7163. (a) No contract for home improvement shall~~
15 ~~be enforceable against the buyer if the obtaining of a loan~~
16 ~~for all or a portion of the contract price is a condition~~
17 ~~precedent to the contract or if the contractor provides~~

1 ~~financing, or in any manner assists the buyer to obtain a~~
2 ~~loan or refers the buyer to any person who may loan or~~
3 ~~arrange a loan for all or a portion of the contract price~~
4 ~~unless all of the following requirements are satisfied:~~

5 ~~(1) The third party, if any, agrees to make the loan.~~

6 ~~(2) The buyer agrees to accept the loan or financing.~~

7 ~~(3) The buyer does not rescind the loan or financing~~
8 ~~transaction, within the period prescribed for rescission,~~
9 ~~pursuant to the federal Truth in Lending Act (15 U.S.C.~~
10 ~~Sec. 1601 et seq.) or Regulation Z, if applicable.~~

11 ~~(b) Until the requirements of paragraphs (1), (2), and~~
12 ~~(3) of subdivision (a) are satisfied, it shall be unlawful for~~
13 ~~the contractor to do any of the following:~~

14 ~~(1) Deliver any property or perform any services~~
15 ~~other than obtaining building permits or other similar~~
16 ~~services preliminary to the commencement of the home~~
17 ~~improvement for which no mechanic's lien can be~~
18 ~~claimed.~~

19 ~~(2) Represent in any manner that the contract is~~
20 ~~enforceable or that the buyer has any obligation~~
21 ~~thereunder.~~

22 ~~Any violation of this subdivision shall render the~~
23 ~~contract unenforceable.~~

24 ~~(c) If the contract is unenforceable pursuant to~~
25 ~~subdivision (a) or subdivision (b), the contractor shall~~
26 ~~immediately and without condition return all money,~~
27 ~~property, and other consideration given by the buyer. If~~
28 ~~the buyer gave any property as consideration and the~~
29 ~~contractor does not or cannot return it for whatever~~
30 ~~reason, the contractor shall immediately return the fair~~
31 ~~market value of the property or its value as designated in~~
32 ~~the contract, whichever is greater. Nothing herein shall~~
33 ~~prohibit a contractor from receiving a downpayment~~
34 ~~otherwise permitted by law provided the contractor~~
35 ~~returns the downpayment as herein required if the~~
36 ~~contract is unenforceable pursuant to subdivision (a) or~~
37 ~~(b).~~

38 ~~(d) (1) Except as provided in paragraph (2), the~~
39 ~~buyer may retain without obligation in law or equity any~~
40 ~~services or property provided pursuant to a contract that~~

1 is ~~unenforceable pursuant to subdivision (a) or~~
2 ~~subdivision (b).~~

3 (2) ~~If the contractor has delivered any property to the~~
4 ~~buyer pursuant to a contract which is unenforceable~~
5 ~~pursuant to subdivision (a) or subdivision (b), the buyer~~
6 ~~shall make the property available to the contractor for~~
7 ~~return provided that all of the following requirements are~~
8 ~~satisfied:~~

9 (A) ~~The property can be practically returned to the~~
10 ~~contractor without causing any damage to the buyer.~~

11 (B) ~~The contractor, at the contractor's expense, first~~
12 ~~returns to the buyer any money, property, and other~~
13 ~~consideration taken by the contractor provided that the~~
14 ~~property is returned in the condition that it was in~~
15 ~~immediately prior to its taking. If applicable, the~~
16 ~~contractor shall also, at its expense, reinstall any property~~
17 ~~taken in the manner in which the property had been~~
18 ~~installed prior to its taking.~~

19 (C) ~~The contractor, at the contractor's expense, picks~~
20 ~~up the property within 60 days of the execution of the~~
21 ~~contract.~~

22 (e) ~~For the purpose of this section, "home~~
23 ~~improvement" means "home improvement" as defined~~
24 ~~in Section 7151. Goods are included within the definition~~
25 ~~notwithstanding whether they are to be attached to real~~
26 ~~property or to be so affixed to real property as to become~~
27 ~~a part thereof whether or not severable therefrom.~~

28 (f) ~~The rights and remedies provided the buyer under~~
29 ~~this section are nonexclusive and cumulative to all other~~
30 ~~rights and remedies under other laws.~~

31 (g) ~~Any waiver of this section shall be deemed~~
32 ~~contrary to public policy and shall be void and~~
33 ~~unenforceable. However, the buyer may waive~~
34 ~~subdivisions (a) and (b) to the extent that the contract is~~
35 ~~executed in connection with the making of emergency~~
36 ~~repairs or services that are necessary for the immediate~~
37 ~~protection of persons or real or personal property. The~~
38 ~~buyer's waiver for emergency repairs or services shall be~~
39 ~~in a dated written statement that describes the~~
40 ~~emergency, states that the contractor has informed the~~

1 ~~buyer of subdivisions (a) and (b) and that the buyer~~
2 ~~waives those provisions, and is signed by each owner of~~
3 ~~the property. Waivers made on printed forms are void~~
4 ~~and unenforceable.~~

5 ~~(h) A violation of this section by a licensee shall subject~~
6 ~~the licensee to mandatory suspension or revocation of his~~
7 ~~or her license pursuant to Article 7 (commencing with~~
8 ~~Section 7090).~~

9 ~~SEC. 2. Section 8214.01 is added to the Government~~
10 ~~Code, to read:~~

11 ~~8214.01. (a) The Secretary of State shall revoke the~~
12 ~~commission of any notary public who, in relation to any~~
13 ~~document or instrument which affects title to, places an~~
14 ~~encumbrance on, places an interest secured by a~~
15 ~~mortgage or deed of trust on, or reconveys a mortgage or~~
16 ~~deed of trust on real property, knowingly and willfully~~
17 ~~makes a false statement in a certificate of~~
18 ~~acknowledgment that one or more persons have~~
19 ~~personally appeared before that notary and~~
20 ~~acknowledged the execution of the document or~~
21 ~~instrument or that the notary personally knows or has~~
22 ~~satisfactory evidence of the identity of the persons~~
23 ~~making the acknowledgment within the meaning of~~
24 ~~Section 1185 of the Civil Code.~~

25 ~~(b) The Secretary of State shall revoke the commission~~
26 ~~of a notary public who knowingly and willfully, with~~
27 ~~intent to defraud, performs any notarial act in relation to~~
28 ~~any document or instrument that affects title to, places an~~
29 ~~encumbrance on, places an interest secured by a~~
30 ~~mortgage or deed of trust on, or reconveys a mortgage on~~
31 ~~a deed of trust on, any real property.~~